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REPORT 99-107
Part 2

OCEAN DUMPING AMENDMENTS ACT OF 1985

JUNE 19, 1985.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. HOWARD, from the Committee on Public Works and Transportation, submitted the following

REPORT

[To accompany H.R. 1957]

[Including cost estimate of the Congressional Budget Office]

The Committee on Public Works and Transportation, to whom was referred the bill (H.R. 1957) to amend title I of the Marine Protection, Research, and Sanctuaries Act of 1972, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are shown in the reported bill with the matter proposed to be stricken enclosed in boldface brackets and the matter proposed to be inserted shown in italic.

INTRODUCTION

H.R. 1957, as reported by the Committee on Merchant Marine and Fisheries, was sequentially referred to the Committee on Public Works and Transportation. The bill amends Title I of the Marine Protection, Research, and Sanctuaries Act of 1972 (the MPRSA).

Title I of the MPRSA provides for the regulation of the dumping of materials into the ocean. Except as authorized by a permit issued pursuant to section 102 or 103 of Title I, no person may transport any material from the United States for the purpose of dumping it into ocean waters. Without a permit, no material may be transported from any location for the purpose of dumping it into the ocean where a vessel or aircraft registered in the United States, or flying the United States flag, is involved, or where a United States Department, agency, or instrumentality is involved. Also, except as permitted under section 102, no person may dump any material transported from a location outside the United States

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into the territorial sea, or into the 12-mile contiguous zone to the extent it will affect the territorial sea or the territory of the United States.

Under section 102, the Administrator of the Environmental Protection Agency (the Administrator) regulates the dumping of materials other than dredged material. Dredged material, under section 103, is regulated by the Secretary of the Army (the Secretary).

The Administrator is authorized to issue permits for dumping where the Administrator determines that the dumping will not unreasonably degrade or endanger human health, welfare or amenities or the marine environment, ecological systems, or economic potentialities. The Administrator is to establish and apply criteria for reviewing and evaluating permit applications.

The Administrator is authorized in section 102(c) to designate recommended sites or times for dumping and, when found necessary to protect critical areas, is required to designate sites or times within which dumping is prohibited.

Section 103 of Title I authorizes the Secretary to issue permits for the transportation of dredged material for the purpose of dumping it into ocean waters where the Secretary determines that the dumping will not unreasonably degrade or endanger human health, welfare or amenities, or the marine environment, ecological health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities. The Secretary must apply the criteria established by the Administrator under section 102(a).

The Secretary makes an independent determination as to the need for the dumping, based upon an evaluation of the potential effects of a permit denial on navigation, economic and industrial development, and foreign and domestic commerce. An independent determination is also made as to other possible methods of disposal and appropriate locations for the dumping. In considering appropriate locations, the Secretary is directed to utilize, to the extent feasible, recommended sites designated by the Administrator.

Prior to issuing a permit, the Secretary must first notify the Administrator. When the Administrator disagrees with the Secretary's determination with regard to the section 102(a) criteria, or with regard to a site where dumping is prohibited under section 102(c), the determination of the Administrator prevails. Provision is made, however, for a waiver. When the Secretary finds that no economically feasible method or site is available for the deposition of the dredged material, a waiver is requested. The Administrator must grant the waiver within 30 days unless the Administrator finds that the dumping will result in an unacceptably adverse impact on municipal water supplies, shellfish beds, wildlife, fisheries, or recreational areas. Finally, in connection with Federal projects involving dredged material, the Secretary may, in lieu of the permit procedure, authorize ocean dumping through regulations which incorporate the same requirements which would apply in the case of permits issued by the Corps.

H.R. 1957, as reported by the Merchant Marine and Fisheries Committee is very similar to H.R. 4829 and also incorporates provision of H.R. 1761, both of which passed the House in the 98th Congress. The amendments to Title I of the MPRSA which were in-

cluded in H.R. 4829 and H.R. 1761 and which now appear in H.R. 1957, include the following:

Wetlands are added to the list of factors to be considered when assessing the effects of dumping.

The discretionary authority of the Administrator to designate recommended dumping sites is made mandatory. This is designed to assure that adequate environmental studies are performed for all sites which are either being used or are proposed to be used for dumping.

In designating sites, the Administrator is directed to take into account a number of factors, including the biological importance of the site and the immediate and accumulative effects on human health and the adjacent ecosystems.

Periodic monitoring of sites is required by the Administrator. If monitoring indicates that a site is no longer suitable for dumping, the dumping must either be limited or terminated.

Existing dump sites are "grandfathered". They can continue to be used until completion of site designation of denial of site designation.

A mandamus provision is included to permit legal actions to compel compliance with site designation requirements.

E.P.A. must submit to Congress within 180 days, a schedule for completing site designation studies.

Quality assurance programs must be established by the Administrator and the Secretary to assure the validity of information used in connection with activities under the Act and penalties are imposed for submission of false statements and information.

No ocean dumping permit may be issued for radiological, chemical, and biological warfare agents or high level radioactive waste.

No permit may be issued or renewed that authorizes the dumping, or the transportation for purposes of dumping, after December 31, 1986 of municipal sludge unless the sewerage authority or other unit of state or local government operating the plan at which the municipal sludge is generated is in compliance with all requirements of the Federal Water Pollution Control Act relating to an effective and comprehensive pretreatment program and the Administrator, in consultation with the Governor of the state in which the unit is located, finds that a suitable land-based alternative to the ocean disposal of the sludge is not currently available.

The Administrator is directed to prescribe by regulation and collect a special fee for permits issued for dumping to recover the costs incurred, or expected to be incurred, in undertaking activities directly associated with the issuance of permits (including site designations), the undertaking of measures of determine compliance with permit terms, the assessment of the direct effects of the dumping, and surveillance and enforcement activities undertaken by Federal agencies.

The Administrator and the Secretary are directed to prescribed and collect from the applicant (unless it is a Federal agency) an application fee in an amount commensurate with the reasonable administrative costs incurred or expected to be incurred in processing the permit.

A finding is made that the New York Bight Apex (the Apex) is no longer a suitable location for the ocean dumping of municipal

sludge. "Municipal sludge" means solid, semisolid, or liquid waste generated by a wastewater treatment plant of a sewerage authority or other unit of State or local government or a privately owned or operated wastewater treatment plant which treats predominately domestic sewage.

No person may apply for a permit in relation to the dumping of, or the transportation for purposes of dumping, municipal sludge within the Apex unless that person is an eligible authority. The term "eligible authority" means any sewerage authority or other unit of State or local government that on November 2, 1983, was authorized under court order to dump municipal sludge at the Apex site.

The Administrator may not issue or renew any permit under Title I of MPRSA that authorizes the dumping of, or the transportation for purposes of dumping, municipal sludge within the Apex after the last day of the 18-month period beginning on the date of the enactment of this section or after the day determined by the Administrator to be the first day on which municipal sludge generated by eligible authorities can reasonably be dumped at a new site designated under the Act other than at a site located within the Apex, whichever date occurs first.

Within three years after the date of the enactment of the bill, the Administrator is to prepare, and submit to the Congress, a New York Bight Apex Restoration Plan, which shall:

(A) Identify and assess the impact of pollutant inputs, such as treated and untreated sewage discharge, industrial outfalls, agricultural and urban runoff, storm sewer overflow, upstream contaminant sources, atmospheric fallout and dumping that are affecting the water quality and marine resources of the Apex;

(B) Identify those uses in the Apex that are being inhibited because of those inputs;

(C) Determine the fate of the contaminants from those inputs and their effect on the marine environment;

(D) Identify technologies and management practices, and determine the costs, necessary to control those inputs;

(E) Identify impediments to the cleanup of those inputs;

(F) Devise a schedule of economically feasible projects to implement the controls identified under subparagraph (D) and to remove the impediments identified under subparagraph (E); and

(G) Develop recommendations for funding and coordinating the various Federal, State and local government programs necessary to implement the projects devised under subparagraph (F).

Within six months after the date of enactment the Administrator is to submit to the Congress a detailed schedule (and the associated funding requirements) for completing the Apex Restoration Plan.

Within one year after the date of enactment the Administrator is to prepare and submit to Congress a report on the technological and economic feasibility of establishing and implementing quality standards for the disposal of municipal sludge through ocean or land-based methods. The quality standards shall set forth maximum permissible concentrations of heavy metals, PCBs, persistent

plastics, microbiological constituents, pathogens, and any other material found in municipal sludge regarding which the Administrator considers the establishment of a maximum permissible concentration to be warranted.

There are authorized to be appropriated to the EPA for purposes of preparing the Apex Restoration Plan, $2 million for fiscal year 1986, $2 million for fiscal year 1987, and $1 million for fiscal year 1988.

The Administration is directed to end the dumping of harmful municipal sludge into ocean waters as soon as possible after the date of the enactment, except that in no case may any dumping of harmful municipal sludge occur after the last day of the 18-month period beginning on the date of enactment, and new applicants will not be permitted to dump harmful municipal sludge during that 18-month period. The term "harmful municipal sludge" means municipal sludge the ocean dumping of which may be harmful to human health, welfare, amenities, or the marine environment, ecological systems, and economic potentialities. Municipal sludge shall be considered to be harmful, for purposes of this section, if it fails to meet the environmental impact criteria of the EPA's regulations issued under Title I of the MPRSA.

New provisions in H.R. 1957, as reported by the Committee on Merchant Marine and Fisheries, include the following:

A prohibition on the use of any funds authorized under the Ocean Dumping Act to assist in the financing of the dumping and transportation of material for the purpose of dumping.

An amendment to the provision requiring the Administrator and the Secretary to apply and adhere to the London Dumping Convention which makes it clear that the provisions of the Administrative Procedure Act apply with respect to implementation of the Convention.

Extension of the provisions of the Ocean Dumping Act to the dumping of materials in the exclusive economic zone of the United States (200 miles).

A provision that the Ocean Dumping Act does not preempt other Federal law with respect to liability caused by non-compliance with the Act or permits issued pursuant to it.

The Committee on Public Works and Transportation has adopted the following six amendments to the bill:

An amendment to provide that the Administrator is authorized to reimburse sewerage authorities who are currently disposing of sewage sludge at the 12-mile New York Bight Apex site for the incremental costs associated with transporting that material to the 106-mile site designated by EPA. The amount of reimbursement would be 100 percent in fiscal year 1986 and 50 percent in fiscal year 1987. After that the additional costs would be a local responsibility. The Committee intends to examine this provision further in order to develop a system of reimbursement which

will encourage the sewerage authorities to begin using the 106-mile site at the earliest possible date.

An amendment which deletes a reference to writs of mandamus because the Federal Rules of Civil Procedure abolished such writs.

An amendment deleting section 15. Section 15 was included to overturn a series of recent court decisions that concluded that Congress preempted Federal Common Law and Federal Maritime Tort Law in the field of pollution when it enacted the Ocean Dumping Act. It is the Committee's view that these court decisions are correct, and that if a permit to dump is to have any certainty, the liabilities set forth in the Act must be exclusive.

An amendment clarifying section 2 of the bill. It states that nothing contained in the provision making EPA's site designation mandatory is to be construed to limit the authority of the Secretary to also designate dumping sites for dredged material.

An amendment amending section 2 of the bill which requires that the sewerage authority generating the sludge to be dumped is in compliance with all requirements for a pretreatment program under the Federal Water Pollution Control Act. Because some of these requirements may not relate to the quality of sludge, the Committee adopted an amendment which states that only those requirements relating to the quality of the sludge must be complied with in order to get a dumping permit.

An amendment amending section 103 of the Ocean Dumping Act which authorizes the Secretary of the Army to issue permits for dredged material when the Secretary determines that the dumping will not unreasonably degrade or endanger human health, the marine environment, ecological systems or economic potentialities. The amendment requires the Secretary in making this determination to consider the relative environmental impacts of all forms of disposal alternatives. Also, the Secretary in consultation with EPA is to be responsible for site management and monitoring for sites designated by the Secretary.

Compliance With Clause 2 (l) of Rule XI of the Rules of the House of Representatives

(1) With reference to clause 2(l)(3)(A) of Rule XI of the Rules of the House of Representatives, the Subcommittee on Investigations and Oversight did not hold hearings on the subject matter of the legislation. The Subcommittee on Water Resources did hold hearings. On July 10, 1985, on H.R. 1957 and on the subject matter of this legislation.

(2) With respect to clause 2(l)(3)(B) of Rule XI of the Rules of the House of Representatives, H.R. 1957, as reported, does not provide new budget authority or increase tax expenditures. Accordingly, a statement pursuant to section 308(a) of the Congressional Budget Act is not required.

(3) With reference to clause a(l)(3)(C) of Rule XI of the Rules of the House of Representatives, the Committee has received a report on H.R. 1957 prepared by the Congressional Budget Office under section 403 of the Congressional Budget Act. The report is as follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 19, 1985.

Hon. JAMES J. HOWARD,
Chairman, Committee on Public Works and Transportation, House of Representatives, Rayburn House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for H.R. 1957, the Ocean Dumping Amendments Act of 1985.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,
Sincerely,

RUDOLPH G. PENNER.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 1957.
2. Bill title: Ocean Dumping Amendments Act of 1985.
3. Bill status: As ordered reported by the House Committee on Public Works and Transportation, July 18, 1985.
4. Bill purpose: H.R. 1957 amends Title I of the Marine Protection, Research, and Sanctuaries Act of 1972 and authorizes appropriations of $8.86 million for each of the fiscal years 1986 and 1987 to the Environmental Protection Agency (EPA) for administering the title. Additional appropriations totaling $5 million over the period 1986 through 1988 are authorized for a study of the New York Bight Apex. The bill also authorizes additional appropriations as may be necessary in fiscal years 1986 and 1987 to reimburse affected communities for the costs they may incur in complying with Section 4 of the bill.

H.R. 1957 would require the EPA to collect "permitting fees" and both the EPA and the Army Corps of Engineers to collect application fees in amounts equal to certain related agency costs.

5. Estimated cost to the Federal Government:

[By fiscal years, in millions of dollars]

	1986	1987	1988	1989	1990
Estimated authorized level	15.3	15.5	1	.....	.....
Less: Estimated collections from permit fees	−6.6	−6.9	.....	.....	.....
Estimated net authorization	8.7	8.6	1	.....	.....
Estimated outlays	7.4	8.3	2	0.5	0.1

Estimated collections do not include fees for dredging material permits or sums that might be collected by the EPA for costs incurred by other federal agencies.

The costs of this bill fall within budget function 300.

Basis of Estimate: The authorization levels are those stated in the bill. For purposes of this estimate, it is assumed that H.R. 1957 will be enacted by September 1985 and that all amounts authorized will be appropriated for each fiscal year. Outlays are estimated based on historical spending patterns and information from the EPA.

Section 4 of the bill would ban all dumping of sewage sludge at the New York Bight Apex 12-mile site within 18 months of enactment. All municipalities that are able to qualify for an EPA permit would be forced to use the 106-mile site. Costs of moving to this site are uncertain and will depend on the contracts eventually signed by the communities. The EPA has estimated a total additional cost to all nine affected municipalities of $24 million annually at 1982 prices ($11.3 million of which would be incurred by New York City). H.R. 1957 would authorize the EPA to reimburse these communities for 100 percent of their incremental costs of dumping at the 106-mile site in 1986 and 50 percent of their additional costs in 1987. It is likely that the transition to the 106-mile site would proceed on a phased schedule beginning by March 1986 and ending around December 1987. Based on this schedule and on information obtained from the EPA, we estimate reimbursable 1986 costs of moving to the new site to be about $4.4 million. Reimbursable costs are estimated to be about $4.6 million in 1987.

Receipts from "permitting fees" and fees to cover the costs of processing applications have been estimated on the basis of information supplied by the EPA and other federal agencies. According to the EPA, permitting activities related to the dumping of municipal or industrial sludge will cost the agency about $3.1 million in fiscal year 1986. If these costs were fully charged to the 17 parties now dumping, the annual fee would average approximately $182,000. In addition, the agency now expects to process approximately six applications by prospective ocean incinerators, who will also be required to obtain ocean dumping permits. An additional $3.5 million is estimated to be needed for permitting activities related to ocean incineration, or about $600,000 per applicant. These averages are derived by assuming that the number of dumpers remains constant. If the number changes, costs per user will change correspondingly. It is possible that in the future other federal agencies that perform oversight functions related to ocean dumping may elect to have the EPA recoup their costs as well. The eligible costs for these agencies (including the Coast Guard and the National Oceanic and Atmospheric Administration) are estimated to be under $2 million a year.

6. Estimated cost to State and local governments: The nine municipalities currently dumping sewage at the New York Bight Apex 12-mile site would incur additional costs for transporting sludge. These costs would be fully reimbursed in 1986—but additional unreimbursed costs to the communities would be about $4.6 million in 1987, and $30 million or more in 1988 and subsequent years. Additional permitting costs will be $1–2 million annually.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Deb Reis.

10. Estimate approved by: C.G. Nuckols, for James L. Blum, Assistant Director for Budget Analysis.

(4) With reference to clause 2(l)(3)(D) of Rule XI of the Rules of the House of Representatives, the Committee has not received a report from the Committee on Government Operations pertaining to this subject matter.

(5) With reference to clause 2(l)(4) of Rule XI of the Rules of the House of Representatives, the following information is provided: The effect of carrying out H.R. 1957, as reported, should be negligible with respect to prices and costs in the operation of the national economy.

Cost of Legislation

Clause 7(a) of Rule XIII of the Rules of the House of Representatives requires a statement of the estimated costs of the United States which would be incurred in carrying out H.R. 1957, as reported, in fiscal year 1985, and each of the following five years. However, under paragraph (d) of clause 7, its provisions do not apply when the Committee has received a timely report from the Congressional Budget Office.

Committee Action and Vote

The Committee, in compliance with Rule XI(2)(l)(2)(A) of the Rules of the House of Representatives, reports favorably the bill H.R. 1957, as reported by the Committee on Merchant Marine and Fisheries, with six amendments. The Committee ordered the bill reported by voice vote.

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

Marine Protection, Research, and Sanctuaries Act of 1972

* * * * * * *

FINDING, POLICY, AND PURPOSE

Sec. 2. (a) * * *

* * * * * * *

(c) It is the purpose of this Act to regulate (1) the transportation by any person of material from the United States and, in the case of United States vessels, aircraft, or agencies, the transportation of material from a location outside the United States, when in either case the transportation is for the purpose of dumping the material into ocean waters, and (2) the dumping of material transported by any person from a location outside the United States, if the dumping occurs in the territorial sea or the [contiguous] *exclusive economic* zone of the United States.

DEFINITIONS

SEC. 3. For the purposes of this Act the term—

(a) * * *

(b) "Ocean waters" means those waters, *and the subjacent areas,* of the open seas lying seaward of the base line from which the territorial sea is measured, as provided for in the Convention on the Territorial Sea and the Contiguous Zone (15 UST 1606; TIAS 5639).

(c) "Material" means matter of any kind or description, including, but not limited to, dredged material, solid waste, incinerator residue, garbage, sewage, [sewage] *municipal* sludge, munitions, radiological, chemical, and biological warfare agents, radioactive materials, chemicals, biological and laboratory waste, wreck or discarded equipment, rock, sand, excavation debris, and industrial, municipal, agricultural, and other waste; but such term does not mean sewage from vessels within the meaning of section 312 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1322). Oil within the meaning of section 311 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1321), shall be included only to the extent that such oil is taken on board a vessel or aircraft for the purpose of dumping.

(d) "United States" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, [the Canal Zone], the territories and possessions of the United States, and the Trust Territory of the Pacific Islands.

* * * * * * *

(m) "Monitoring" means the systematic, time-series observation of materials, contaminants, or pertinent components of the marine ecosystem over a period of time sufficient to determine the existing levels, trends, and natural variations of measured components in the water column, sediments, and biota for the purpose of ensuring that immediate harmful effects of dumping are detected, and cumulative and long-term effects are detected, forecasted, and evaluated. Observations may include but are not limited to, the following procedures, depending upon the type of waste to be dumped and the characteristics of the site: (1) seasonal sampling and analyses of the infaunal community and sediment for purposes of characterizing structural composition and size distribution; (2) sampling and analyses of sediment and selected organisms to determine levels of hydrocarbon, trace metals, and chemical and pathogenic contaminants identified as constituents of wastes to be dumped; (3) profiling measurements of standard oceanographic parameters including dissolved oxygen, salinity, and water temperature; (4) characterization of large-scale surface topography and megafaunal structure and composition; and (5) sampling and analyses to determine levels of nutrients and organic carbon.

(n) "Municipal sludge" means solid, semisolid, or liquid waste generated by a waste water treatment plant of a sewerage authority or other unit of State or local government or a privately owned or operated waste water treatment plan which treats predominantly domestic sewage.

(o) "exclusive economic zone" means the zone established by Proclamation Numbered 5030, dated March 10, 1983.

TITLE I—OCEAN DUMPING

PROHIBITED ACTS

SEC. 101. (a) * * *

[(b) Except as may be authorized by a permit issued pursuant to section 102 of this title, and subject to regulations issued pursuant to section 108 of this title, no person shall dump any material transported from a location outside the United States (1) into the territorial sea of the United States, or (2) into a zone contiguous to the territorial sea of the United States, extending to a line twelve nautical miles seaward from the base line from which the breadth of the territorial sea is measured, to the extent that it may affect the territorial sea or the territory of the United States.]

(b) Except as may be authorized by a permit issued pursuant to section 102 of this title, and subject to regulations issued pursuant to section 108 of this title, no person shall dump any material transported from a location outside the United States (1) into the territorial sea of the United States, or (2) into the exclusive economic zone of the United States.

ENVIRONMENTAL PROTECTION AGENCY PERMITS

SEC. 102. (a)*(1)* Except in relation to dredged material, as provided for in section 103 of this title[, and in relation to radiological, chemical, and biological warfare agents and high-level radioactive waste, for which no permit may be issued], *and except as provided in paragraphs (2) and (3),* the Administrator may issue permits, after notice and opportunity for public hearings, for the transportation from the United States or, in the case of an agency or instrumentality of the United States, or in the case of a vessel or aircraft registered in the United States or flying the United States flag, for the transportation from a location outside the United States, of material for the purpose of dumping it into ocean waters, or for the dumping of material into the waters described in section 101(b), where the Administrator determines that such dumping will not unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities. The Administrator shall establish and apply criteria for reviewing and evaluating such permit applications, and, in establishing or revising such criteria, shall consider, but not be limited in his consideration to the following:

(A) The need for the proposed dumping.

(B) The effect of such dumping on human health and welfare, including economic, esthetic, and recreational values.

(C) The effect of such dumping on fisheries resources, plankton, fish, shellfish, wildlife, shore lines [and beaches.] *beaches, and wetlands.*

(D) The effect of such dumping on marine ecosystems, particularly with respect to—

(i) the transfer, concentration, and dispersion of such material and its byproducts through biological, physical, and chemical processes,

(ii) potential changes in marine ecosystem diversity, productivity, and stability, and

(iii) species and community population dynamics.

(E) The persistence and permanence of the effects of the dumping.

(F) The effect of dumping particular volumes and concentrations of such materials.

(G) Appropriate locations and methods of disposal or recycling, including land-based alternatives and the probable impact of requiring use of such alternate locations or methods upon considerations affecting the public interest.

(H) The effect on alternate uses of oceans, such as scientific study, fishing, and other living resource exploitation, and nonliving resource exploitation.

(I) In designating recommended sites, the Administrator shall utilize wherever feasible locations beyond the edge of the Continential Shelf.

In establishing or revising such criteria, the Administrator shall consult with Federal, State, and local officials, and interested members of the general public, as may appear appropriate to the Administrator. With respect to such criteria as may affect the civil works program of the Department of the Army, the Administrator shall also consult with the Secretary. In reviewing applications for permits, the Administrator shall make such provision for consultation with interested Federal and State agencies as he deems useful or necessary. No permit shall be issued for a dumping of material which will violate applicable water quality standards. [To the extent that he may do so without relaxing the requirements of this title, the Administrator, in establishing or revising such criteria, shall apply the standards and criteria binding upon the United States under the Convention, including its Annexes.]

(2) No permit may be issued under this title in relation to the following:

(A) Radiological, chemical, and biological warfare agents.

(B) High-level radioactive waste.

(3) No permits may be issued or renewed under this title that authorizes the dumping, or the transportation for purposes of dumping, after December 31, 1986, of municipal sludge, whether or not the sludge is subject to section 104A, unless—

(A) the sewerage authority or other unit of State or local government operating the plant at which the municipal sludge is generated is in compliance with those requirements of sections 307(b) and 402(b)(8) of the Federal Water Pollution Control Act (33 U.S.C. 1317(b) and 1342(b)(8)) which are related to the quality of municipal sludge; and

(B) the Administrator, in consultation with the Governor of the State in which the unit is located, finds that a suitable land-based alternative to the ocean disposal of the sludge is not currently available,

* * * * * * *

[(c) The Administrator may, considering the criteria established pursuant to subsection (a) of this section, designate recommended sites or times for dumping and, when he finds it necessary to protect critical areas, shall, after consultation, with the Secretary, also

designate sites or times within which certain materials may not be dumped.]

(c)(1) The Administrator shall designate sites at which materials may be dumped pursuant to this section and, after consultation with the Secretary, at which materials may be dumped pursuant to section 103; except that no site may be designated by the Administrator under this subsection until the Administrator undertakes and completes an analysis of the characteristics of the site and its suitability for dumping and of the environmental effects which will likely result from dumping. In undertaking such an analysis of each site, the Administrator shall take into consideration the factors set forth in subsection (a) and shall specificallay take into account the following:

(A) The types and quantities of wastes and pollutants projected to be deposited in, and adjacent to, the site from dumping and other sources;

(B) The ability of the waters at the site to disperse, detoxify, or neutralize the materials;

(C) The importance of the site to the surrounding biological community, including the presence of breeding, spawning, nursery or foraging areas, migratory pathways, or areas necessary for other functions or critical stages in the life cycle of marine organisms; and

(D) The immediate and cumulative effects on human health and on the ecosystem adjacent to the site and the persistent effects on the ecosystem within the site.

Nothing contained in this paragraph shall be construed to limit the authority of the Secretary under section 103.

(2) The Administrator shall—

(A) periodically monitor, or cause to be monitored, the effects of the dumping of materials at or adjacent to each site for which the Administrator determines, on the basis of the characteristics of the site and the materials to be dumped, that such monitoring is necessary to accomplish the purposes of this title; and

(B) at the close of the third year after the site designation and at every three-year interval thereafter until such time as the designation is terminated, estimate the extent of the dumping and other waste inputs that will occur in and adjacent to each site during the next three-year period.

(3) If at any time the Administrator, on the basis of the factors taken into account under subparagraphs (A) through (D) of paragraph (1), or on the basis of the monitoring or estimates, required under paragraph (2), determines that the site is no longer suitable for such dumping, the Administrator shall—

(A) limit dumping at the site to certain materials or at certain times or both; or

(B) suspend or terminate the designation of the site under paragraph (1).

In making a determination under the preceding sentence that a site is no longer suitable for dumping pursuant to section 103, the Administrator shall consult the Secretary.

* * * * * * *

CORPS OF ENGINEERS PERMITS

SEC. 103. (a) * * *

(b) In making the determination required by subsection (a), the Secretary shall apply those creteria, established pursuant to section 102(a), relating to the effects of the dumping. Based upon an evaluation of the potential effect of a permit denial on navigation, economic and industrial development, and foreign and domestic commerce of the United States, the Secretary shall make an independent determination as to the need for dumping. The Secretary shall also make an independent determination as to other possible methods of disposal and as to appropriate locations for the dumping. [In considering appropriate locations, he shall, to the extent feasible, utilize the recommended sites designated by the Administrator pursuant to section 102(c).] *In conducting the independent determination under the preceding sentence, the Secretary shall consider the relative environmental impacts of, and shall give equal treatment to, all alternative forms of disposal. In considering appropriate locations, he shall, to the extent feasible, utilize the recommended sites designated by the Administrator pursuant to section 102(c). The Secretary, in consultation with the Administrator shall be responsible for management, including appropriate monitoring, of sites utilized pursuant to this section.*

* * * * * * *

PERMIT CONDITIONS

SEC. 104. [(a) Permits issued under this title shall desigate and include (1) the type of material authorized to be transported for dumping or to be dumped; (2) the amount of material authorized to be transported for dumping or to be dumped; (3) the location where such transport for dumping will be terminated or where such dumping will occur; (4) the length of time for which the permits are valid and their expiration date; (5) any special provisions deemed necessary by the Administrator or the Secretary; as the case may be, after consultation with the Secretary of the Department in which the Coast Guard is operating, for the monitoring and surveillance of the transportation or dumping; and (6) such other matters as the Administrator or the Secretary, as the case may be, deems appropriate.]

(a) Permits issued under this title shall designate and include—

(1) the type of material authorized to be transported for dumping or to be dumped;

(2) the amount of material authorized to be transported for dumping or to be dumped;

(3) the location where such transport for dumping will be terminated or where such dumping will occur;

(4) the length of time for which the permits are valid and their expiration date;

(5) any special provisions deemed necessary by the Administrator or the Secretary, as the case may be, to minimize the harm from dumping, which may include measures that the permittee must take to plan, develop, acquire, or implement, as appropriate—

(A) alternatives for the disposal of the material,

(B) processes for reducing or eliminating any contaminants in the material, or

(C) processes for recycling the material;

(6) after consultation with the Secretary of the Department in which the Coast Guard is operating, any special provisions deemed necessary by the Administrator or the Secretary, as the case may be, for the monitoring and surveillance of the transportation or dumping; and

(7) such other matters as the Administrator or the Secretary, as the case may be, deems appropriate.

[(b) The Administrator or the Secretary, as the case may be, may prescribe such processing fees for permits and such reporting requirements for actions taken pursuant to permits issued by him under this title as he deems appropriate.]

(b)(1) The Administrator or the Secretary, as the case may be, shall prescribe and collect from the applicant, unless the applicant is a Federal agency, an application fee in an amount commensurate with the reasonable administrative costs incurred or expected to be incurred by the Administrator or Secretary in processing the permit. The application fee shall be deposited to the principal appropriation account or accounts used to carry out the processing of permits under this title.

(2)(A) The Administrator shall prescribe by regulation and collect a special fee for permits issued under section 102 to recover the costs incurred, or expected to be incurred, in undertaking activities directly associated with the issuance of permits (including site designations), the undertaking of measures to determine compliance with permit terms, the assessment of the direct effects of the dumping, and surveillance and enforcement activities undertaken by Federal agencies. The special fee shall be deposited to the principal appropriation account or accounts used to carry out site designation, site and compliance monitoring, surveillance and enforcement, and other activities directly associated with the issuance of permits.

(B) The funds collected under subparagraph (A) may be transferred in part to other Federal agencies for the costs incurred or expected to be incurred in connection with activities described in subparagraph (A) to the extent the fees recover these costs.

(3) The requirements of this subsection shall take effect beginning in fiscal year 1986. the expenditure of funds raised by the fees shall be subject to appropriations.

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(e)*(1)* The Administrator or the Secretary, as the case may be, shall require an applicant for a permit under this title to provide such information as he may consider necessary to review and evaluate such application.

(2) The Administrator and the Secretary shall establish and maintain quality assurance programs to ensure the validity, accuracy, and sufficiency of information submitted to or used by the Administrator or the Secretary in connection with applications for permits or other activities undertaken pursuant to this title. Such quality assurance programs shall encompass, but not be limited to, the design, implementation, and analysis of sampling, testing, and mon-

itoring procedures and results. The Administrator and the Secretary shall each individually report annually, as a part of the report required under section 112 of the title, on the status of implementation of this subsection; except that the first such quality assurance reporting shall be submitted to the Congress no later than 1 year after the effective date of this subsection.

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(j) The Administrator or Secretary, as the case may be, may prescribe such reporting requirements as he or she deems appropriate with regard to actions taken by permittees pursuant to permits issued under this title.

SPECIAL PROVISIONS REGARDING THE NEW YORK BIGHT APEX

SEC. 104A. (a) For the purposes of this section—

(1) The term "Apex" means the New York Bight Apex consisting of the ocean waters of the Atlantic Ocean westward of 73 degrees 30 minutes west longitude and northward of 40 degrees 10 minutes north latitude.

(2) The term "Apex site" means that site within the Apex at which the dumping of municipal sludge occurred before October 1, 1983.

(3) The term "eligible authority" means any sewage authority or other unit of State or local government that on November 2, 1983, was authorized under court order to dump municipal sludge at the Apex site.

(b) No person may apply for a permit under this title in relation to the dumping of, or the transportation for purposes of dumping, municipal sludge within the Apex unless that person is an eligible authority.

(c) The Administrator may not issue, or renew, any permit under this title that authorizes the dumping of, or the transportation for purposes of dumping, municipal sludge within the Apex after the earlier of—

(1) the last day of the eighteen-month period beginning on the date of the enactment of this section; or

(2) the day determined by the Administrator to be the first day on which municipal sludge generated by eligible authorities can reasonably, be dumped at a site designated under section 102 other than a site within the Apex.

(d)(1) Within three years after the date of the enactment of this section, the Administrator shall prepare and submit to the Congress a New York Bight Apex Restoration Plan. In preparing the plan, the Administrator shall hold public hearings in order to obtain the views and comments of interested persons.

(2) The New York Bight Apex Restoration Plan required to be prepared under paragraph (1) shall—

(A) identify and assess the impact of pollutant inputs, such as treated and untreated sewage discharge, industrial outfalls, agricultural and urban runoff, storm sewer overflow, upstream contaminant sources, atmospheric fallout, and dumping that are affecting the water quality and marine resources of the Apex;

(B) identify those uses in the Apex that are being inhibited because of those inputs;

(C) determine the fate of the contaminants from those inputs and their effect on the marine environment;

(D) identify technologies and management practices, and determine the costs, necessary to control those inputs;

(E) identify impediments to the cleanup of those inputs;

(F) devise a schedule of economically feasible projects to implement the controls identified under subparagraph (D) and to remove the impediments identified under subparagraph (E); and

(G) develop recommendations for funding and coordinating the various Federal, State, and local government programs necessary to implement the projects devised under subparagraph (F).

Within six months after the date of the enactment of this section, the Administrator shall submit to the Congress a detailed schedule (and the associated funding requirements) for completing the restoration plan required by this subsection.

(e) Within one year after the date of the enactment of this section, the Administrator shall prepare and submit to Congress a report on the technological and economic feasibility of establishing and implementing quality standards for the disposal of municipal sludge through ocean or land-based methods. The quality standards shall set forth maximum permissible concentrations of heavy metal, PCB's, persistent plastics, microbiological constituents, pathogens, and any other material found in municipal sludge regarding which the Administrator considers the establishment of maximum permissible concentrations to be warranted.

(f) In addition to funds authorized under section 111, there are authorized to be appropriated to the Environmental Protection Agency, for purposes of preparing the New York Bight Apex Restoration Plan required under subsection (d)(1), the following amounts:

(1) $2,000,000 for fiscal year 1986.

(2) $2,000,000 for fiscal year 1987.

(3) $1,000,000 for fiscal year 1988.

(g)(1) The Administrator is authorized to reimburse an eligible authority for a percentage (as specified in paragraph (2)) of the amount by which the cost of transporting and dumping municipal sludge generated by such authority at a site designated under section 102 (other than a site within the Apex), exceeds the cost of transporting and dumping such sludge which would have been incurred if such sludge had been transported and dumped at the Apex site.

(2) The percentage referred to in paragraph (1) shall be—

(A) 100 percent in the case of costs incurred in transporting and dumping municipal sludge during fiscal year 1986; and

(B) 50 percent in the case of costs incurred in transporting and dumping municipal sludge during fiscal year 1987.

(3) There is authorized to be appropriated for fiscal years 1986 and 1987 such sums as may be necessary to carry out this subsection.

PENALTIES

SEC. 105. (a) * * *

(b) *(1)* In addition to any action which may be brought under subsection (a) of this section, a person who knowingly violates this title, regulations promulgated under this title, or a permit issued under this title shall be fined not more than $50,000, or imprisoned for not more than one year, or both.

(2) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this title or who falsifies, tampers with, of knowingly renders inaccurate any monitoring, sampling, or testing device or method required to be maintained or implemented under this title, shall upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than six months, or both. For purposes of this section, the term "person" shall mean, in addition to the definition contained in section 3(e) of this title, any responsible corporate officer.

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(g)(1) * * *

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(5) Upon application of any person, the district courts of the United States shall have jurisdiction to order the Administrator to implement in a timely manner the site designation provisions of this title for those sites for which site designation proceedings are incomplete and at which dumping is authorized pursuant to permits issued under sections 102 and 103. Nothing in this paragraph is intended to affect the conduct of any dumping actively under a permit issued under this title pending the completion of site designation proceedings. Paragraph (4) of this subsection shall not apply to any suit brought pursuant to this paragraph.

[5**]***(6)* The **[**injunctive**]** relief provided by this subsection shall not restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any standard or limitation or to seek any other relief (including relief against the Administrator, the Secretary, or a State agency).

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RELATIONSHIP TO OTHER LAWS

SEC. 106. (a) * * *

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(g) To the extent that they may do so without relaxing the requirements of this title, and in accordance with chapter 5 of title 5, United States Code, the Administrator and the Secretary shall adhere to and apply the requirements of the Convention, including its annexes, that are binding upon the United States when implementing this title.

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SEC. 111. There are hereby authorized to be appropriated not to exceed $3,600,000 for fiscal year 1973, not to exceed $5,500,000 for each of the fiscal years 1974 and 1975, not to exceed $5,300,000 for

fiscal year 1976, not to exceed $1,325,000 for the transition period (July 1 through September 30, 1976), not to exceed $4,800,000 for fiscal year 1977, not to exceed $4,800,000 for fiscal year 1978, not to exceed $2,000,000 for each of fiscal year 1980, fiscal year 1981, [and] not to exceed $4,213,000 for fiscal year 1982, *and not to exceed $8,864,000 for each of fiscal years 1986 and 1987,* for the purposes and administration of this title, and for succeeding fiscal years only such sums as the Congress may authorized by law.

[SEC. 112. The Administrator shall on or before February 1 of each year report to the Congress on the administration of this title during the preceding fiscal year, including recommendations for additional legislation if deemed necessary.]

SEC. 112. In March of each year, the Administrator and the Secretary shall each individually report to the Congress on the administration of this title during the previous calendar year.

SECTION 4 OF THE ACT OF NOVEMBER 4, 1977

AN ACT To amend the Marine Protection, Research, and Sanctuaries Act of 1972 to authorize appropriations to carry out the provisions of such Act for fiscal year 1978

SEC. 4. [(a) The Administrator of the Environmental Protection Agency (hereinafter referred to in this section as the "Administrator") shall end the dumping of sewage sludge and industrial waste into ocean waters, or into waters described in section 101(b) of the Marine Protection, Research, and Sanctuaries Act of 1972, as soon as possible after the date of enactment of this section, but, except as provided in subsections (b) and (c), in no case may the Administrator issue any permit, or any renewal thereof (under title I of such Act of 1972) which authorizes any such dumping after December 31, 1981.]

(a) The Administrator of the Environmental Protection Agency (hereinafter in this section referred to as the "Administrator") shall—

(1) end the dumping of harmful municipal sludge into ocean waters or into waters described in section 101(b) of the Marine Protection, Research, and Sanctuaries Act of 1972 as soon as possible after the date of the enactment of the Ocean Dumping Amendments Act of 1985, except that in no case may any dumping of harmful municipal sludge—

(A) occur after the last day of the 18-month period beginning on the date of the enactment of such Amendments Act of 1985; or

(B) be authorized under such Act of 1972 for other than an eligible authority within the meaning of section 104A(a)(3) of that Act; and

(2) end the dumping of industrial waste into such waters, except as provided in subsections (b) and (c).

* * * * * * *

(d) For purposes of this section—

[(1) the term "sewage sludge" means any solid, semisolid, or liquid waste generated by a municipal wastewater treatment plant the ocean dumping of which may unreasonably degrade or endanger human health, welfare, or amenities, or the

marine environment, ecological systems, and economic potentialities; and]

(1) The term "harmful municipal sludge" means municipal sludge (as defined in section 3(n) of such Act of 1972) the ocean dumping of which may be harmful to human health, welfare, amenities, or the marine environment, ecological systems, and economic potentialities. Municipal sludge shall be considered to be harmful, for purposes of this section, if it fails to meet the environmental impact criteria of the Environmental Protection Agency's regulations issued under title I of the Marine Protection, Research, and Sanctuaries Act of 1972.

(2) [the] *The* term "industrial waste" means any solid, semisolid, or liquid waste generated by a manufacturing or processing plant the ocean dumping of which may unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems, and economic potentialities.

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